

ORIGINAL TRANSCRIPT

DIVISION OF OIL, GAS & MINING

STATE OF UTAH

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## INFORMAL CONFERENCE

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TAKEN AT: Department of Natural Resources
1594 West North Temple
Conference Room A
Salt Lake City, UT 84114

DATE: January 28, 2003

TIME: 10:25 a.m.

REPORTED BY: Kerry J. Sorensen, RPR

RECEIVED

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APPEARANCES

DIVISION OF OIL, GAS AND MINING:

Lowell P. Braxton, Conference Chairman

Mary Ann Wright

D. Wayne Hedberg

Lynn Kunzler

ASSISTANT ATTORNEY GENERAL:

Steven F. Alder, Esq.

ALSO PRESENT:

Dan Powell

Susan White



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Informal Conference

January 28, 2003

PROCEEDINGS

THE CONFERENCE OFFICER: Well, let's go ahead and get started, then. This is the informal conference that was requested for the Cherry Hill Park Mine. We refer to that as M/049/021. We're conducting this under the authority of Title 40-8, Utah Code.

A "conference" is defined in--in the Utah code as an "informal adjudicating proceeding," and that's defined at 40-8-4. I'm going to read kind of an abbreviated definition of an "adjudicative proceeding," just to kind of set the tone for what we're doing right here. That term is a Division--and that's Division of Oil, Gas & Mining or Board of Oil, Gas, & Mining--action or proceeding that determines the legal rights, duties or other legal interests of one or more identifiable persons, including actions to grant deny, revoke, suspend or amend an authority, license, or permit. So that's--that's not a literal definition, but that's the essence of the definition of the statute.

So we're looking, then, at a permitting

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1 action that's--that's taken place, and there's
2 been some concerns raised by the Division as to
3 the timeliness of that action. And we apparently
4 gave you, Dan, some options as to what you might
5 do, and you requested this informal conference, so
6 that's what we're doing right now.

7 One thing that I'll add before I turn
8 this over to the Division, is that we have
9 procedures for dealing with evasion of the
10 chapter, which may be what we're dealing with
11 right now. Those are enumerated in Chapter 40-8,
12 specifically 40-8-9, and those procedures include
13 levelling civil penalties, cessation orders, and--
14 and other options that are available to the
15 Division. So I--as--as we talk about where we're
16 going today, I think we need to recognize that--
17 that at least from my--my understanding of what's
18 happening, this has been a clearly protracted
19 permitting action, and we haven't done this--this
20 informal conference at the spur of the moment. I
21 think there's a history here that--that I'd like
22 the Division to develop, and then if there's
23 something, Dan, that you can do that's--that's
24 going to facilitate compliance with the--with the
25 act and the regulations, that's what we'd like to



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1 hear from you.

2 So with that, I'll turn it over to--to
3 Wayne Hedberg.

4 MR. HEDBERG: Okay. This morning, as
5 Lowell indicated, the purpose of this informal
6 conference is--is to provide the operator with an
7 opportunity to come in and discuss the status
8 of--of where he is at in terms of responding to
9 the Division's requests for information and--and
10 the resolution of the outstanding permitting
11 requirements. What I'd like to do this morning
12 is have one of my staff members, Lynn Kunzler,
13 read into the record at least some of the key
14 permitting history and chronology that has--will
15 kind of set the stage for where we began with the
16 permitting process and the steps that we've gone
17 through to get us to where we are today.

18 And I've provided you with a copy, Dan,
19 of the chronology there, so you can follow along
20 with that.

21 With that, I guess I'd like to turn--

22 MR. KUNZLER: Okay. Summarizing
23 chronology, and there's a few entries on the
24 chronology I won't be discussing, history of the
25 Cherry Hill Park Mine began, as far as the



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1 Division is concerned, on July 8th of 1992, when
2 we received the small mining notice of intention
3 to conduct operations at the Cherry Hill project.
4 The next year, in July 22 of '93, we inspected
5 the site and found that the site was in
6 compliance with just slightly less than five acres
7 of disturbance.

8 By July of--27th, 1994, another
9 inspection occurred. We found and estimated the
10 acreage to have exceeded the five acres, with an
11 approximate seven acres of disturbance, and we
12 were provided information at that time that the
13 operator had posted a reclamation surety with Utah
14 County to cover nine acres of disturbance.

15 In August the 24th of '94 we sent a
16 letter to the operator requesting that a large
17 mine notice be filed with the Division within 45
18 days.

19 In October he'd requested an extension
20 for 30 days. The Division granted that extension,
21 and on November 14th of 1994 we received the
22 original large mining operation notice of
23 intention.

24 In June 2nd of 1995 the Division sent a
25 deficiency review of that notice requesting a--a



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1 response on that.

2 October 27th of '97 we sent another
3 request asking the operator to respond to that
4 review, which was at that time over two years
5 old.

6 December 4th of '97 the operator again
7 requested a 90-day extension to submit that. This
8 was subsequently denied by the Division. We felt
9 that it already had been over two years and
10 another 90 days wouldn't do anything, and we
11 established a February 27th, 1998 deadline to have
12 the--the response in.

13 On February 27th we received a--a fax
14 from the operator which stated that he would
15 reclaim a portion of the operation to get back
16 under five acres, rather than submitting the--or
17 proceeding with permitting as a large mining
18 operation. His annual reports for that year
19 indicated that there was about 13 acres of
20 disturbance.

21 In December of '98 the Division sent a
22 letter again requesting a formal submission of all
23 the permitting materials to date. The Division
24 had never received a certified copy of the map or
25 letter stating that sufficient acreage had not



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1 been reclaimed to--to have him as a small mining
2 operation.

3 So in March 3rd of 1999 we received a
4 revised large mining operation notice.

5 In September 22nd of '99 we did a
6 survey of the site during an inspection, using a
7 GPS global positioning satellite system. We
8 calculated that there was approximately 20.6 acres
9 of disturbance on the ground. 19.7 acres of that
10 would require reclamation. There was a small area
11 of approximately nine-tenths of an acre that would
12 remain unreclaimed at the request of the
13 landowner. Also, at that time there was about
14 4.3 acres that had been regraded.

15 September 30th of 1999 the Division
16 completed a second deficiency review of the March
17 3rd '99 submittal.

18 In January 23rd of 2001 we again sent a
19 certified letter requesting a response to our
20 reviews, and established a 30-day time to do that.

21 May 7th of 2001 the operator came into
22 our office and claimed that the letter that we
23 had sent had been delivered to the wrong address.
24 We gave him another copy of the--the response in
25 the letter at that time and gave him until the



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1 end of June 2001 to respond.

2 On June 29th of 2001 we received a
3 letter from the operator requesting a meeting to
4 discuss the review to make a time frame to make
5 the submissions.

6 July 30th of 2001 we had a meeting to
7 discuss the review. The operator was again
8 granted 45 days to submit the information.

9 On September 17th of 2001 we received a
10 phone call requesting another two-week extension.
11 This was granted 'til October 1 of 2001.

12 January 22nd of 2002 we sent a
13 certified Division directive. It had been over
14 100 days since we had extended the--past the
15 extended deadline of October 1st of 2001, and he
16 was asked to contact the associate director to
17 schedule a meeting to remedy the situation.

18 On January 31st we received a phone
19 call with regards to that certified letter. He
20 indicated that he hadn't received it, we'd sent it
21 to a Price address, and he says, "I live in Utah
22 County. I only get to Price every few weeks to
23 pick up the mail." We faxed him another copy of
24 that letter.

25 On February 11th the operator called



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1 and scheduled a--the meeting with the associate
2 director for February 25th of--of 2002.

3 On February 19th we received another
4 phone call requesting that we reschedule the
5 meeting to early March, and that was subsequently
6 scheduled for March 12th.

7 On March 12th of 2002 we met with Mr.
8 Powell, the associate director in mineral staff.
9 We went over the operator's responses to
10 outstanding technical deficiencies, and Mr. Powell
11 agreed to provide a formal response to the
12 Division by March 22nd.

13 April 3rd of 2002 the Division called
14 Mr. Powell, requesting the status of this
15 technical response. It was now, again, overdue.
16 He--the--at the time Mr. Powell indicated that he
17 was having difficulty requiring the information
18 needed, and with his taxes due he needed a couple
19 more weeks so he could also comply with tax laws.

20 On May 14th of 2002 the Division issued
21 a notice of noncompliance and Division directive.
22 We faxed, as well as certified mail, this to the
23 operator, ordering suspension of operations,
24 posting of the reclamation surety, and submitting
25 the reclaiming deficiencies. And a 30-day



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1 deadline was established, drawn, the receipt of
2 the letter to post the surety.

3 On June 11th we received the response
4 to the September 30th, 1999 review letter.

5 June 26th we had a site inspection.
6 The site was inactive, but the operator did not
7 show up for that scheduled inspection to discuss
8 some of the concerns that were there on-site.

9 Between July and December we'd had
10 several phone calls and personal contacts with the
11 operator to discuss where the reclamation surety
12 was. He indicated he was having troubles in
13 obtaining that surety. He indicated he'd been
14 talking with several surety companies, banks,
15 etc., and it seemed like every time we talked to
16 him he says, "Well, I think I've got it lined up.
17 I'll have it to you within a week to ten days."
18 To date we still have not received that
19 reclamation surety.

20 On January 9th we sent a proposed
21 agency action letter to Mr. Powell. This was
22 hand delivered by the Utah County Sheriff's Office
23 on January 14th. This letter outlined the
24 procedures--or, the action the Division was--was
25 taking in--to address the noncompliance, and gave



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1 Mr. Powell the option of appealing either to the
2 Board or to the Division director.

3 And that brings us to today where we're
4 now in that hearing, or conference.

5 MR. HEDBERG: I think having read this
6 chronology into the record, as Lynn indicated this
7 kind of brings us up to where we are today. And
8 I guess my position from this point would to give
9 Mr. Powell an opportunity to rebut any of the
10 statements or records that we have indicated here,
11 if he feels that they are in error or that
12 there's some corrections that need to be made.
13 We're here to--to listen to those, and, as well,
14 any other updated information you may have in
15 terms of acquiring surety and completing this
16 permitting process.

17 MR. POWELL: Okay. Well, thanks for
18 giving me the opportunity to come in here and
19 address this issue today. I didn't come prepared
20 to rebut any allegations with regard to supposed
21 evasive action on--on any regulations set up by
22 the state to DOGM. I don't know where you're
23 headed with that, but don't get yourself in
24 trouble, that's all I can say.

25 I--I've never intended to do such. I--



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1 I am a one-man team. I don't have a--a full
2 staff of people walking around with their hands in
3 their pockets, you know, from time to time,
4 dreaming up how they can take rights from someone,
5 okay? I'm--I'm just a one-man team and I've done
6 the best I--I can.

7 But I want to go over your little
8 chronology here. What I want to start with is
9 what--we want to focus on--on November 14th, 1994,
10 when I--when we--the Division received the
11 original large mine application, okay? If I have
12 to hire an attorney, that's what I'm going to
13 focus on. I'm going to focus on November the
14 14th, 1994, when that was submitted and all of
15 these supposed--and I'm going to use your
16 language--"outstanding technical deficiencies,"
17 because I don't think there was any. I think you
18 went over the same issues time and time again--
19 time and time again. And if I hire an attorney,
20 this will come out, okay, if I have to, but I
21 doubt I'll need one.

22 From November the 14th, when we--when
23 we filed this, I note that it took the Division--
24 and I don't have the convenience or the luxury of
25 having the--the state statutes before me, but I--I



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1 do know enough about the state statutes to know
2 that--that the state's not permitted six or eight
3 months to come back with a response to a large
4 mine application, and--and--and then, when they do
5 come back with a response, put in it "outstanding
6 technical deficiencies," that took me more than
7 eight years to not only understand, but I'll bet
8 you that the--the--my response when--when you
9 stamped your satisfaction on it, it wasn't much
10 different than when it was received November the
11 14th. And if you want to push the issue, we'll
12 find out. And so I'm putting a lot of weight
13 on--on what you refer to as "outstanding technical
14 deficiencies," because I don't think there was
15 any. I don't think there was any. I don't think
16 there was any when--when I filed that on the 14th
17 of November 1994, and I don't think there's any
18 now. And I think they were the same.

19 And then on your November 14th, 2002
20 "order suspension of operation," there was no
21 order of suspension of operation, because I'd
22 already--I only operate when I have a market.
23 There wasn't anything that--to--to suspend from.
24 So, you know, you can--you can break the suspense
25 and the drama. There wasn't any order to--to--to



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1 suspend, it was already suspended. If you had
2 gone down and done the inspections, like I'm
3 paying you to do, you would already know that.

4 Let's see here. Oh, with--with--with
5 regards to the May 7th, 2001, "Operator came into
6 the office....," you know, I love how you put your
7 letters together to make it look on--so bad on
8 the claimant. You know what? When I do hire an
9 attorney, he's going to love this, how--how you
10 change things around, distort things, twist things
11 to make--to make it look like I'm doing just that
12 you've claimed here, that's erroneous, okay?

13 "Operator came into the office, claimed
14 a letter was sent to the wrong address to Steven
15 Powell." Well, hell no, that couldn't be further
16 from the truth. How that came up is I came in to
17 Joell because you guys was calling me up saying I
18 was supposed to receive a letter, and I did not--
19 I did not--and I'm putting an asterisk by that--I
20 did not find that out until Joell told me. She
21 told me, I didn't tell her. So, you know, with--
22 with all your effectiveness here in the--the DOGM
23 offices, you ought to send it to the right
24 address, okay?

25 And--and that was--that was--and it was



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1 more than--than what--it was--it goes beyond what
2 someone claimed, it's a fact. DOGM sent it to
3 the wrong address.

4 MR. HEDBERG: That was the address you
5 gave us.

6 MR. POWELL: Yeah. I'm not running--
7 I'm not doing your work for you, partner.

8 THE CONFERENCE OFFICER: Did you
9 provide that address that we sent it to?

10 MR. POWELL: Did I provide it?

11 THE CONFERENCE OFFICER: Yes.

12 MR. POWELL: I don't know where you got
13 it. You answer that yourself.

14 THE CONFERENCE OFFICER: Well, I'm just
15 asking a question--

16 MR. KUNZLER: It was an address you had
17 provided to us.

18 MR. POWELL: You're full of crap,
19 Kunzler. That was--I don't know where you got it.

20 THE CONFERENCE OFFICER: Okay. Well,
21 let's--let's keep going.

22 MR. POWELL: Hey--hey, let me tell you
23 something. That party that you sent that to is
24 my competition, and if he--if they use that
25 information that you sent them, you are going to



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1 get sued, and remember that. That's a competing
2 corporation. That information you sent them is
3 classified, and I asked that it be classified,
4 confidential. So when you're--when you're doing
5 your little paperwork, remember that. You came up
6 with that address. That's my competition's. Why
7 would I give you my competition's address, okay?

8 So I'll get down to the nuts and bolts
9 here. As far as the letter that you sent, it
10 looks like that we're--you know, with all of this
11 bull crap about stalling and--and holding things
12 back, we're down to one issue, okay, and that's--
13 that's Item Number 3, the bond. So what I'm
14 going to do is I'm going to go over a history
15 of--of my attempts to satisfy that, okay?

16 Back in the--in July--or--or June,
17 after I submitted that information that satisfied
18 the Items 1 and 2, I started working immediately
19 on that, okay? And if you want to--if you want to
20 make a copy of this card and call those people,
21 you can do that. I made application at Wiseman
22 Insurance Agency, 289 East Center; Provo, Utah,
23 okay, and I went to a gentleman by the name of
24 Rob. I filed an application.

25 THE CONFERENCE OFFICER: Excuse me.



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1 When--when did you do that?

2 MR. POWELL: Immediately after--
3 immediately at the time that I was filing the
4 information in June. So it was June--June or
5 July.

6 THE CONFERENCE OFFICER: Of what year?

7 MR. POWELL: In fact, I've got--

8 THE CONFERENCE OFFICER: Excuse me,
9 please. What year did you do that?

10 MR. POWELL: 2002.

11 THE CONFERENCE OFFICER: Okay. Thanks.

12 MR. POWELL: I've got your late--late
13 June, early July I made application with Wiseman.
14 It was--it's actually a process. There's--there
15 were several documents that I had to--to file with
16 them, okay? And I didn't hear back from Weisman.
17 I--I--I filed my documents with Weisman, I never
18 heard back from them. And then in the fall--
19 sometime in the fall, when I contacted them back,
20 they said that their underwriter had--had quit
21 doing that, okay? They had quit doing the
22 reclamation bonds, reclamation surety, okay?

23 So if you want to call them and ask
24 them why their underwriter doesn't do that
25 anymore, that's up to you. All I know is I was



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1 denied, okay? And I--and I made applications with
2 them.

3 I later went to Key Bank and made
4 application for a letter of credit, and I dealt
5 with a loan processor. His name was Adam
6 Christensen, and--and Nathan Walker. He's with--
7 he's a relationship manager for Key Bank. And
8 their office was on Orem Parkway Key Center in
9 Orem. And, according to them--I sat down with
10 them after they reviewed my application and stuff.
11 And they was two parts to the letter of credit,
12 for the amount of 43,500, and I have the
13 application right here, okay?

14 THE CONFERENCE OFFICER: What's the
15 date of the application?

16 MR. POWELL: The date of the
17 application is--I don't see a date on it, okay?

18 Anyway, when I sat down with them they
19 said there was two parts of it. There was
20 corporate assets for--for security, collateral
21 security, and then the other part to it was, you
22 know, how much business are we currently doing?
23 Well, the--the core is not operating, we don't
24 have a cash flow, and that was our downfall. He
25 said without a cash flow he couldn't give me the



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1 letter of credit, okay? And so we--we--we--Emery
2 Industrial Resources was denied that letter of
3 credit.

4 After that I went back to Wiseman's,
5 trying to make some headway there and find out
6 some facts, and, you know, all Wiseman told me is
7 they gave me another bonding agency. They gave
8 me the name of Cindy Parmley with CornerStone
9 Insurance in Orem. And so I went--I've gone to--
10 to CornerStone and I've made applications, and
11 I've brought back the letter here. And I--if you
12 want to make a copy of this and keep it for your
13 records, you can, but I--and you can keep the
14 original, if you want to, but I need a copy for
15 my file.

16 THE CONFERENCE OFFICER: Okay. Thank
17 you.

18 MR. POWELL: And so, you know, it's
19 still--it's still in process and there's--there's
20 no evasiveness involved in it. And if you want--
21 if you want to push that issue, I'll be glad to
22 entertain it.

23 THE CONFERENCE OFFICER: That's your
24 statement?

25 MR. POWELL: That's my statement.



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1 THE CONFERENCE OFFICER: Tell me, why
2 has it taken so long to get to where we are?

3 MR. POWELL: You ask yourself. You ask
4 yourself that.

5 THE CONFERENCE OFFICER: No, I'm asking
6 you. I'm asking you specifically.

7 MR. POWELL: Well, I--I think that
8 there's--I--I'd say that there's two reasons. I'd
9 say, number one, I'd--I'd say the state's drug
10 their feet, and, number two, I--me being alone
11 and--and having to do all of these requirements
12 myself, I think it's taken more time.

13 THE CONFERENCE OFFICER: And--and do
14 you understand that--that under the law you
15 shouldn't have created any of this disturbance
16 without a permit and an adequate bond? Do--do
17 you understand that part of the law?

18 MR. POWELL: Well, I--I feel we've
19 lived up to the law.

20 THE CONFERENCE OFFICER: So do you
21 agree on the amounts of disturbance that are shown
22 in the--in the chronology that we presented you
23 with?

24 MR. POWELL: I don't. I don't agree
25 with the amount that--the land and I don't agree



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1 with the--the amounts that the state has set for
2 the reclamation. And I've--I've expressed that
3 to--to Lynn on several occasions, and I know that
4 he doesn't have that in his notes.

5 THE CONFERENCE OFFICER: Do you--

6 MR. POWELL: Make that part of the
7 record.

8 THE CONFERENCE OFFICER: Well, it is.
9 It's--

10 MR. POWELL: Yeah.

11 THE CONFERENCE OFFICER: It's being--
12 it's what we're creating.

13 MR. POWELL: Yeah. Make that part of
14 the record.

15 THE CONFERENCE OFFICER: Do--do you
16 understand that--

17 MR. POWELL: Your 43.5, I could get
18 someone to go down there and do the reclamation
19 that's two state spec.'s for about a third of
20 that.

21 THE CONFERENCE OFFICER: Do you agree
22 with the surface disturbance that we're talking
23 about in--in terms of the number of acres?

24 MR. POWELL: I don't. I've already--
25 I've already said that.



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1 THE CONFERENCE OFFICER: Okay. But--
2 but do you understand that it's--you're the one
3 that's supposed to provide the maps when--when you
4 do a permit application?

5 MR. POWELL: I--I don't understand
6 that. I have supplied the maps.

7 THE HEARING OFFICER: So there's a
8 substantial difference between you and the
9 Division in terms of the--the reclamation
10 disturbance--

11 MR. POWELL: You'd better answer that
12 yourself.

13 THE CONFERENCE OFFICER: Well, I'm
14 asking you.

15 MR. POWELL: Yeah.

16 THE CONFERENCE OFFICER: That's what
17 you're here for.

18 MR. POWELL: I--I--I go by my maps,
19 okay? I go by the maps I furnished.

20 THE CONFERENCE OFFICER: And are those
21 maps certified or--or done by a certified surveyor
22 or anything like that?

23 MR. POWELL: They started out that way.

24 THE CONFERENCE OFFICER: Has the--has
25 the amount of disturbance increased from the time



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1 that you've been working with us to acquire a
2 permit? In other words, can we--can we agree
3 that this started off as a small mining operation
4 with less than five acres' disturbance?

5 MR. POWELL: I would say that--I'd say
6 yes to that, but I'd say that there was quite a
7 bit of disturbance when we started, and I think
8 that should be taken into account.

9 THE CONFERENCE OFFICER: So it was
10 disturbance that was created by a different
11 operator?

12 MR. POWELL: That's right. It was--it
13 was--it was disturbed by Loudermouth Construction
14 back in the late '70s. In fact, let me--if
15 you've got--let me--can I see your map there?
16 Okay. Okay. But let me ask a few questions, if
17 I might. Who put this together? Who put this
18 map together?

19 MR. KUNZLER: I did.

20 MR. POWELL: Okay. What did you create
21 it from, Lynn?

22 MR. KUNZLER: I created that map from
23 the GPS data that I collected and overlaid it on
24 top of the USGS topographical map.

25 MR. POWELL: Okay. On a--on a--on a



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1 United States topographical map. What is this
2 little square--or that little emblem there, that
3 little icon? What is that?

4 MR. KUNZLER: It--it indicates that
5 there was--as of that map, that there was some
6 type of mining related disturbance. They'd called
7 it a gravel pit.

8 MR. POWELL: So do you know the date
9 that was on that map?

10 MR. KUNZLER: I do not--

11 MR. POWELL: Okay.

12 MR. KUNZLER: --at this time. I'd have
13 to go look and see what the--

14 MR. POWELL: Well, just tell me what
15 you think. What--what would you say? When do
16 you think that map was made? Do you think it was
17 prior to the time that we started there?

18 MR. KUNZLER: I--I--as far as the map I
19 used, no. It's probably been updated within the
20 last ten years.

21 MR. POWELL: So when did we start?

22 MR. KUNZLER: You started a small mine
23 11 years ago.

24 I don't know the date of the map. It
25 was--it's a computer generated map, and they--



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1 MR. POWELL: Well, if--
 2 MR. KUNZLER: --try to keep them
 3 updated with--
 4 MR. POWELL: Is there a chance--is
 5 there any chance--
 6 MR. KUNZLER: There--there is. And I'm
 7 not--we're not arguing that there was something
 8 there before you moved in.
 9 MR. POWELL: Okay. That's the point
 10 I'm trying to make. Thank you.
 11 MR. KUNZLER: And we've never argued
 12 that.
 13 MR. POWELL: Okay.
 14 MR. KUNZLER: And, in fact, the portion
 15 on that map that shows--that's identified as not
 16 needing--needing reclamation is old disturbance
 17 that was done prior to you being there, that you
 18 are not reimpacting, reusing, necessarily.
 19 MR. POWELL: Yeah. Well, that's the
 20 remnants. That's--that's the remnants of what you
 21 can--that you--that you--
 22 MR. KUNZLER: But--but--but the law
 23 says that if you reuse areas that were previously
 24 disturbed you do have a responsibility for
 25 reclamation of those areas.



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1 MR. POWELL: Okay.

2 THE CONFERENCE OFFICER: Let's--let's
3 look at page 2 on the chronology, Mr. Powell, if
4 you wouldn't mind. And--and--and I'm seeing two--
5 two acres--two acreage amounts. Look at the
6 September 22nd, 1999. We're GPSing and seeing 19
7 or 20 acres, and you're submitting an annual
8 report a few months after that, January 29th, 2001
9 that identifies eight acres of disturbance.

10 MR. POWELL: Uh-huh.

11 THE CONFERENCE OFFICER: What--what do
12 the permits--

13 MR. POWELL: I don't--I don't think
14 we've ever--I don't think we--in any of our annual
15 reports I don't think you can find one where we
16 exceeded 13 acres. And that was by our own
17 estimates. And out of the 13 we reclaimed five,
18 what we feel is five acres. So that's why it went
19 back down to eight.

20 THE CONFERENCE OFFICER: Okay. Is
21 there anything that--that we can agree on in terms
22 of your willingness to--to comply with posting a
23 bond and/or reclaiming the disturbances that
24 you've created, or are we at loggerheads right now
25 in terms of--of where we're going, because I don't



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1 want to protract this--conference if--if that's
2 the case.

3 MR. POWELL: Did you see that document
4 that I just handed to you?

5 THE CONFERENCE OFFICER: I can see it
6 in front of me right now.

7 MR. POWELL: Maybe you ought to read
8 it. And--and those words that you're using is
9 twisting and distorting the record, and I want it
10 corrected, and let's quit playing games.

11 THE CONFERENCE OFFICER: Well, then I
12 think if--do you have anything else you want to
13 say?

14 MR. POWELL: That's it.

15 THE CONFERENCE OFFICER: Do you have
16 any--

17 MR. POWELL: I'll let that document
18 speak for itself.

19 THE CONFERENCE OFFICER: Then I think
20 we'll conclude by saying that we have unreclaimed
21 disturbance and unbonded disturbance right here.
22 I'm going to--to review this letter that you
23 suggested that we do, and I'm going to make a
24 finding on this, and I'll have those findings to
25 you within 30 days.



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1 MR. POWELL: Great. I'll be waiting
2 for it. In the meantime, I'll be working on my
3 bond.

4 THE CONFERENCE OFFICER: And do we have
5 a correct address for you?

6 MR. POWELL: What address have you been
7 sending it to?

8 THE CONFERENCE OFFICER: I'm asking
9 you. You--you asserted that we didn't have an
10 adequate address. Is the address that we have on
11 the record right now your current address, your
12 current business address?

13 MR. POWELL: And what--what address is
14 that, sir?

15 THE CONFERENCE OFFICER: Please read
16 that, Wayne.

17 MR. HEDBERG: We have a--the last
18 letter that was sent, and I believe it was sent
19 to his home address, which is 62 South 800 West;
20 Payson, Utah 84651.

21 MR. POWELL: That--that--that's great.

22 THE CONFERENCE OFFICER: That's where
23 we should be sending business records?

24 MR. POWELL: Either that one or the
25 P.O. Box 489; Price, Utah 84501. Either one of



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1 those will get to me. But sending it to my
2 competition is not only against the law, that's
3 the wrong address, and nobody--nobody that deals
4 with Emery Industrial Resources ever authorized
5 that, ever.

6 Thank you.

7 THE CONFERENCE OFFICER: Thank you for
8 coming in.

9 That will conclude this informal
10 conference.

11 (The conference was concluded at 11:10 a.m.)
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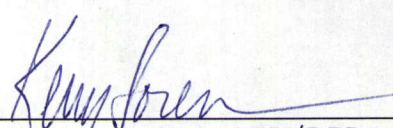
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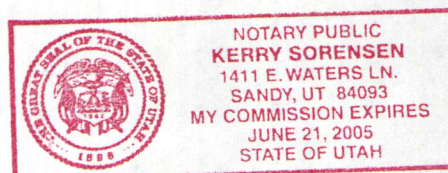
CERTIFICATE

This is to certify that the foregoing deposition was taken before me, KERRY SORENSEN, a Registered Professional Reporter and Notary Public in and for the State of Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.


Kerry Sorensen, CSR/RPR
My Commission Expires:
June 21, 2005



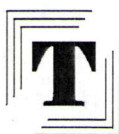
<p style="text-align: right;">Page 1</p> <p>1 DIVISION OF OIL, GAS & MINING</p> <p>2 STATE OF UTAH</p> <p>3</p> <p>4 ~~~~~</p> <p>5 INFORMAL CONFERENCE</p> <p>6 ~~~~~</p> <p>7 TAKEN AT: Department of Natural Resources</p> <p>8 1594 West North Temple</p> <p>9 Conference Room A</p> <p>10 Salt Lake City, UT 84114</p> <p>11 DATE: January 28, 2003</p> <p>12 TIME: 10:25 a.m.</p> <p>13 REPORTED BY: Kerry J. Sorensen, RPR</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 Informal Conference</p> <p>2 January 28, 2003</p> <p>3 PROCEEDINGS</p> <p>4 THE CONFERENCE OFFICER: Well, let's go</p> <p>5 ahead and get started, then. This is the</p> <p>6 informal conference that was requested for the</p> <p>7 Cherry Hill Park Mine. We refer to that as</p> <p>8 M/049/021. We're conducting this under the</p> <p>9 authority of Title 40-8, Utah Code.</p> <p>10 A "conference" is defined in--in the</p> <p>11 Utah code as an "informal adjudicating</p> <p>12 proceeding," and that's defined at 40-8-4. I'm</p> <p>13 going to read kind of an abbreviated definition of</p> <p>14 an "adjudicative proceeding," just to kind of set</p> <p>15 the tone for what we're doing right here. That</p> <p>16 term is a Division--and that's Division of Oil,</p> <p>17 Gas & Mining or Board of Oil, Gas, & Mining--</p> <p>18 action or proceeding that determines the legal</p> <p>19 rights, duties or other legal interests of one or</p> <p>20 more identifiable persons, including actions to</p> <p>21 grant deny, revoke, suspend or amend an authority,</p> <p>22 license, or permit. So that's--that's not a</p> <p>23 literal definition, but that's the essence of the</p> <p>24 definition of the statute.</p> <p>25 So we're looking, then, at a permitting</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 DIVISION OF OIL, GAS AND MINING:</p> <p>4 Lowell P. Braxton, Conference Chairman</p> <p>5 Mary Ann Wright</p> <p>6 D. Wayne Hedberg</p> <p>7 Lynn Kunzler</p> <p>8</p> <p>9 ASSISTANT ATTORNEY GENERAL:</p> <p>10 Steven F. Alder, Esq.</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13 Dan Powell</p> <p>14 Susan White</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 action that's--that's taken place, and there's</p> <p>2 been some concerns raised by the Division as to</p> <p>3 the timeliness of that action. And we apparently</p> <p>4 gave you, Dan, some options as to what you might</p> <p>5 do, and you requested this informal conference, so</p> <p>6 that's what we're doing right now.</p> <p>7 One thing that I'll add before I turn</p> <p>8 this over to the Division, is that we have</p> <p>9 procedures for dealing with evasion of the</p> <p>10 chapter, which may be what we're dealing with</p> <p>11 right now. Those are enumerated in Chapter 40-8,</p> <p>12 specifically 40-8-9, and those procedures include</p> <p>13 levelling civil penalties, cessation orders, and--</p> <p>14 and other options that are available to the</p> <p>15 Division. So I--as--as we talk about where we're</p> <p>16 going today, I think we need to recognize that--</p> <p>17 that at least from my--my understanding of what's</p> <p>18 happening, this has been a clearly protracted</p> <p>19 permitting action, and we haven't done this--this</p> <p>20 informal conference at the spur of the moment. I</p> <p>21 think there's a history here that--that I'd like</p> <p>22 the Division to develop, and then if there's</p> <p>23 something, Dan, that you can do that's--that's</p> <p>24 going to facilitate compliance with the--with the</p> <p>25 act and the regulations, that's what we'd like to</p>

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<p style="text-align: right;">Page 5</p> <p>1 hear from you. 2 So with that, I'll turn it over to--to 3 Wayne Hedberg. 4 MR. HEDBERG: Okay. This morning, as 5 Lowell indicated, the purpose of this informal 6 conference is--is to provide the operator with an 7 opportunity to come in and discuss the status 8 of--of where he is at in terms of responding to 9 the Division's requests for information and--and 10 the resolution of the outstanding permitting 11 requirements. What I'd like to do this morning 12 is have one of my staff members, Lynn Kunzler, 13 read into the record at least some of the key 14 permitting history and chronology that has--will 15 kind of set the stage for where we began with the 16 permitting process and the steps that we've gone 17 through to get us to where we are today. 18 And I've provided you with a copy, Dan, 19 of the chronology there, so you can follow along 20 with that. 21 With that, I guess I'd like to turn-- 22 MR. KUNZLER: Okay. Summarizing 23 chronology, and there's a few entries on the 24 chronology I won't be discussing, history of the 25 Cherry Hill Park Mine began, as far as the</p>	<p style="text-align: right;">Page 7</p> <p>1 response on that. 2 October 27th of '97 we sent another 3 request asking the operator to respond to that 4 review, which was at that time over two years 5 old. 6 December 4th of '97 the operator again 7 requested a 90-day extension to submit that. This 8 was subsequently denied by the Division. We felt 9 that it already had been over two years and 10 another 90 days wouldn't do anything, and we 11 established a February 27th, 1998 deadline to have 12 the--the response in. 13 On February 27th we received a--a fax 14 from the operator which stated that he would 15 reclaim a portion of the operation to get back 16 under five acres, rather than submitting the--or 17 proceeding with permitting as a large mining 18 operation. His annual reports for that year 19 indicated that there was about 13 acres of 20 disturbance. 21 In December of '98 the Division sent a 22 letter again requesting a formal submission of all 23 the permitting materials to date. The Division 24 had never received a certified copy of the map or 25 letter stating that sufficient acreage had not</p>
<p style="text-align: right;">Page 6</p> <p>1 Division is concerned, on July 8th of 1992, when 2 we received the small mining notice of intention 3 to conduct operations at the Cherry Hill project. 4 The next year, in July 22 of '93, we inspected 5 the site and found that the site was in 6 compliance with just slightly less than five acres 7 of disturbance. 8 By July of--27th, 1994, another 9 inspection occurred. We found and estimated the 10 acreage to have exceeded the five acres, with an 11 approximate seven acres of disturbance, and we 12 were provided information at that time that the 13 operator had posted a reclamation surety with Utah 14 County to cover nine acres of disturbance. 15 In August the 24th of '94 we sent a 16 letter to the operator requesting that a large 17 mine notice be filed with the Division within 45 18 days. 19 In October he'd requested an extension 20 for 30 days. The Division granted that extension, 21 and on November 14th of 1994 we received the 22 original large mining operation notice of 23 intention. 24 In June 2nd of 1995 the Division sent a 25 deficiency review of that notice requesting a--a</p>	<p style="text-align: right;">Page 8</p> <p>1 been reclaimed to--to have him as a small mining 2 operation. 3 So in March 3rd of 1999 we received a 4 revised large mining operation notice. 5 In September 22nd of '99 we did a 6 survey of the site during an inspection, using a 7 GPS global positioning satellite system. We 8 calculated that there was approximately 20.6 acres 9 of disturbance on the ground. 19.7 acres of that 10 would require reclamation. There was a small area 11 of approximately nine-tenths of an acre that would 12 remain unreclaimed at the request of the 13 landowner. Also, at that time there was about 14 4.3 acres that had been regraded. 15 September 30th of 1999 the Division 16 completed a second deficiency review of the March 17 3rd '99 submittal. 18 In January 23rd of 2001 we again sent a 19 certified letter requesting a response to our 20 reviews, and established a 30-day time to do that. 21 May 7th of 2001 the operator came into 22 our office and claimed that the letter that we 23 had sent had been delivered to the wrong address. 24 We gave him another copy of the--the response in 25 the letter at that time and gave him until the</p>

2 (Pages 5 to 8)



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<p style="text-align: right;">Page 9</p> <p>1 end of June 2001 to respond. 2 On June 29th of 2001 we received a 3 letter from the operator requesting a meeting to 4 discuss the review to make a time frame to make 5 the submissions. 6 July 30th of 2001 we had a meeting to 7 discuss the review. The operator was again 8 granted 45 days to submit the information. 9 On September 17th of 2001 we received a 10 phone call requesting another two-week extension. 11 This was granted 'til October 1 of 2001. 12 January 22nd of 2002 we sent a 13 certified Division directive. It had been over 14 100 days since we had extended the--past the 15 extended deadline of October 1st of 2001, and he 16 was asked to contact the associate director to 17 schedule a meeting to remedy the situation. 18 On January 31st we received a phone 19 call with regards to that certified letter. He 20 indicated that he hadn't received it, we'd sent it 21 to a Price address, and he says, "I live in Utah 22 County. I only get to Price every few weeks to 23 pick up the mail." We faxed him another copy of 24 that letter. 25 On February 11th the operator called</p>	<p style="text-align: right;">Page 11</p> <p>1 deadline was established, drawn, the receipt of 2 the letter to post the surety. 3 On June 11th we received the response 4 to the September 30th, 1999 review letter. 5 June 26th we had a site inspection. 6 The site was inactive, but the operator did not 7 show up for that scheduled inspection to discuss 8 some of the concerns that were there on-site. 9 Between July and December we'd had 10 several phone calls and personal contacts with the 11 operator to discuss where the reclamation surety 12 was. He indicated he was having troubles in 13 obtaining that surety. He indicated he'd been 14 talking with several surety companies, banks, 15 etc., and it seemed like every time we talked to 16 him he says, "Well, I think I've got it lined up. 17 I'll have it to you within a week to ten days." 18 To date we still have not received that 19 reclamation surety. 20 On January 9th we sent a proposed 21 agency action letter to Mr. Powell. This was 22 hand delivered by the Utah County Sheriff's Office 23 on January 14th. This letter outlined the 24 procedures--or, the action the Division was--was 25 taking in--to address the noncompliance, and gave</p>
<p style="text-align: right;">Page 10</p> <p>1 and scheduled a--the meeting with the associate 2 director for February 25th of--of 2002. 3 On February 19th we received another 4 phone call requesting that we reschedule the 5 meeting to early March, and that was subsequently 6 scheduled for March 12th. 7 On March 12th of 2002 we met with Mr. 8 Powell, the associate director in mineral staff. 9 We went over the operator's responses to 10 outstanding technical deficiencies, and Mr. Powell 11 agreed to provide a formal response to the 12 Division by March 22nd. 13 April 3rd of 2002 the Division called 14 Mr. Powell, requesting the status of this 15 technical response. It was now, again, overdue. 16 He--the--at the time Mr. Powell indicated that he 17 was having difficulty requiring the information 18 needed, and with his taxes due he needed a couple 19 more weeks so he could also comply with tax laws. 20 On May 14th of 2002 the Division issued 21 a notice of noncompliance and Division directive. 22 We faxed, as well as certified mail, this to the 23 operator, ordering suspension of operations, 24 posting of the reclamation surety, and submitting 25 the reclaiming deficiencies. And a 30-day</p>	<p style="text-align: right;">Page 12</p> <p>1 Mr. Powell the option of appealing either to the 2 Board or to the Division director. 3 And that brings us to today where we're 4 now in that hearing, or conference. 5 MR. HEDBERG: I think having read this 6 chronology into the record, as Lynn indicated this 7 kind of brings us up to where we are today. And 8 I guess my position from this point would to give 9 Mr. Powell an opportunity to rebut any of the 10 statements or records that we have indicated here, 11 if he feels that they are in error or that 12 there's some corrections that need to be made. 13 We're here to--to listen to those, and, as well, 14 any other updated information you may have in 15 terms of acquiring surety and completing this 16 permitting process. 17 MR. POWELL: Okay. Well, thanks for 18 giving me the opportunity to come in here and 19 address this issue today. I didn't come prepared 20 to rebut any allegations with regard to supposed 21 evasive action on--on any regulations set up by 22 the state to DOGM. I don't know where you're 23 headed with that, but don't get yourself in 24 trouble, that's all I can say. 25 I--I've never intended to do such. I--</p>

3 (Pages 9 to 12)



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<p style="text-align: right;">Page 13</p> <p>1 I am a one-man team. I don't have a--a full 2 staff of people walking around with their hands in 3 their pockets, you know, from time to time, 4 dreaming up how they can take rights from someone, 5 okay? I'm--I'm just a one-man team and I've done 6 the best I--I can. 7 But I want to go over your little 8 chronology here. What I want to start with is 9 what--we want to focus on--on November 14th, 1994, 10 when I--when we--the Division received the 11 original large mine application, okay? If I have 12 to hire an attorney, that's what I'm going to 13 focus on. I'm going to focus on November the 14 14th, 1994, when that was submitted and all of 15 these supposed--and I'm going to use your 16 language--"outstanding technical deficiencies," 17 because I don't think there was any. I think you 18 went over the same issues time and time again-- 19 time and time again. And if I hire an attorney, 20 this will come out, okay, if I have to, but I 21 doubt I'll need one. 22 From November the 14th, when we--when 23 we filed this, I note that it took the Division-- 24 and I don't have the convenience or the luxury of 25 having the--the state statutes before me, but I--I</p>	<p style="text-align: right;">Page 15</p> <p>1 suspend, it was already suspended. If you had 2 gone down and done the inspections, like I'm 3 paying you to do, you would already know that. 4 Let's see here. Oh, with--with--with 5 regards to the May 7th, 2001, "Operator came into 6 the office...", you know, I love how you put your 7 letters together to make it look on--so bad on 8 the claimant. You know what? When I do hire an 9 attorney, he's going to love this, how--how you 10 change things around, distort things, twist things 11 to make--to make it look like I'm doing just that 12 you've claimed here, that's erroneous, okay? 13 "Operator came into the office, claimed 14 a letter was sent to the wrong address to Steven 15 Powell." Well, hell no, that couldn't be further 16 from the truth. How that came up is I came in to 17 Joell because you guys was calling me up saying I 18 was supposed to receive a letter, and I did not-- 19 I did not--and I'm putting an asterisk by that--I 20 did not find that out until Joell told me. She 21 told me, I didn't tell her. So, you know, with-- 22 with all your effectiveness here in the--the DOGM 23 offices, you ought to send it to the right 24 address, okay? 25 And--and that was--that was--and it was</p>
<p style="text-align: right;">Page 14</p> <p>1 do know enough about the state statutes to know 2 that--that the state's not permitted six or eight 3 months to come back with a response to a large 4 mine application, and--and--and then, when they do 5 come back with a response, put in it "outstanding 6 technical deficiencies," that took me more than 7 eight years to not only understand, but I'll bet 8 you that the--the--my response when--when you 9 stamped your satisfaction on it, it wasn't much 10 different than when it was received November the 11 14th. And if you want to push the issue, we'll 12 find out. And so I'm putting a lot of weight 13 on--on what you refer to as "outstanding technical 14 deficiencies," because I don't think there was 15 any. I don't think there was any. I don't think 16 there was any when--when I filed that on the 14th 17 of November 1994, and I don't think there's any 18 now. And I think they were the same. 19 And then on your November 14th, 2002 20 "order suspension of operation," there was no 21 order of suspension of operation, because I'd 22 already--I only operate when I have a market. 23 There wasn't anything that--to--to suspend from. 24 So, you know, you can--you can break the suspense 25 and the drama. There wasn't any order to--to--to</p>	<p style="text-align: right;">Page 16</p> <p>1 more than--than what--it was--it goes beyond what 2 someone claimed, it's a fact. DOGM sent it to 3 the wrong address. 4 MR. HEDBERG: That was the address you 5 gave us. 6 MR. POWELL: Yeah. I'm not running-- 7 I'm not doing your work for you, partner. 8 THE CONFERENCE OFFICER: Did you 9 provide that address that we sent it to? 10 MR. POWELL: Did I provide it? 11 THE CONFERENCE OFFICER: Yes. 12 MR. POWELL: I don't know where you got 13 it. You answer that yourself. 14 THE CONFERENCE OFFICER: Well, I'm just 15 asking a question-- 16 MR. KUNZLER: It was an address you had 17 provided to us. 18 MR. POWELL: You're full of crap, 19 Kunzler. That was--I don't know where you got it. 20 THE CONFERENCE OFFICER: Okay. Well, 21 let's--let's keep going. 22 MR. POWELL: Hey--hey, let me tell you 23 something. That party that you sent that to is 24 my competition, and if he--if they use that 25 information that you sent them, you are going to</p>

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<p style="text-align: right;">Page 17</p> <p>1 get sued, and remember that. That's a competing 2 corporation. That information you sent them is 3 classified, and I asked that it be classified, 4 confidential. So when you're--when you're doing 5 your little paperwork, remember that. You came up 6 with that address. That's my competition's. Why 7 would I give you my competition's address, okay? 8 So I'll get down to the nuts and bolts 9 here. As far as the letter that you sent, it 10 looks like that we're--you know, with all of this 11 bull crap about stalling and--and holding things 12 back, we're down to one issue, okay, and that's-- 13 that's Item Number 3, the bond. So what I'm 14 going to do is I'm going to go over a history 15 of--of my attempts to satisfy that, okay? 16 Back in the--in July--or--or June, 17 after I submitted that information that satisfied 18 the Items 1 and 2, I started working immediately 19 on that, okay? And if you want to--if you want to 20 make a copy of this card and call those people, 21 you can do that. I made application at Wiseman 22 Insurance Agency, 289 East Center; Provo, Utah, 23 okay, and I went to a gentleman by the name of 24 Rob. I filed an application. 25 THE CONFERENCE OFFICER: Excuse me.</p>	<p style="text-align: right;">Page 19</p> <p>1 denied, okay? And I--and I made applications with 2 them. 3 I later went to Key Bank and made 4 application for a letter of credit, and I dealt 5 with a loan processor. His name was Adam 6 Christensen, and--and Nathan Walker. He's with-- 7 he's a relationship manager for Key Bank. And 8 their office was on Orem Parkway Key Center in 9 Orem. And, according to them--I sat down with 10 them after they reviewed my application and stuff. 11 And they was two parts to the letter of credit, 12 for the amount of 43,500, and I have the 13 application right here, okay? 14 THE CONFERENCE OFFICER: What's the 15 date of the application? 16 MR. POWELL: The date of the 17 application is--I don't see a date on it, okay? 18 Anyway, when I sat down with them they 19 said there was two parts of it. There was 20 corporate assets for--for security, collateral 21 security, and then the other part to it was, you 22 know, how much business are we currently doing? 23 Well, the--the core is not operating, we don't 24 have a cash flow, and that was our downfall. He 25 said without a cash flow he couldn't give me the</p>
<p style="text-align: right;">Page 18</p> <p>1 When--when did you do that? 2 MR. POWELL: Immediately after-- 3 immediately at the time that I was filing the 4 information in June. So it was June--June or 5 July. 6 THE CONFERENCE OFFICER: Of what year? 7 MR. POWELL: In fact, I've got-- 8 THE CONFERENCE OFFICER: Excuse me, 9 please. What year did you do that? 10 MR. POWELL: 2002. 11 THE CONFERENCE OFFICER: Okay. Thanks. 12 MR. POWELL: I've got your late--late 13 June, early July I made application with Wiseman. 14 It was--it's actually a process. There's--there 15 were several documents that I had to--to file with 16 them, okay? And I didn't hear back from Weisman. 17 I--I--I filed my documents with Weisman, I never 18 heard back from them. And then in the fall-- 19 sometime in the fall, when I contacted them back, 20 they said that their underwriter had--had quit 21 doing that, okay? They had quit doing the 22 reclamation bonds, reclamation surety, okay? 23 So if you want to call them and ask 24 them why their underwriter doesn't do that 25 anymore, that's up to you All I know is I was</p>	<p style="text-align: right;">Page 20</p> <p>1 letter of credit, okay? And so we--we--we--Emery 2 Industrial Resources was denied that letter of 3 credit. 4 After that I went back to Wiseman's, 5 trying to make some headway there and find out 6 some facts, and, you know, all Wiseman told me is 7 they gave me another bonding agency. They gave 8 me the name of Cindy Parmley with CornerStone 9 Insurance in Orem. And so I went--I've gone to-- 10 to CornerStone and I've made applications, and 11 I've brought back the letter here. And I--if you 12 want to make a copy of this and keep it for your 13 records, you can, but I--and you can keep the 14 original, if you want to, but I need a copy for 15 my file. 16 THE CONFERENCE OFFICER: Okay. Thank 17 you. 18 MR. POWELL: And so, you know, it's 19 still--it's still in process and there's--there's 20 no evasiveness involved in it. And if you want-- 21 if you want to push that issue, I'll be glad to 22 entertain it. 23 THE CONFERENCE OFFICER: That's your 24 statement? 25 MR. POWELL: That's my statement.</p>

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<p style="text-align: right;">Page 21</p> <p>1 THE CONFERENCE OFFICER: Tell me, why 2 has it taken so long to get to where we are? 3 MR. POWELL: You ask yourself. You ask 4 yourself that. 5 THE CONFERENCE OFFICER: No, I'm asking 6 you. I'm asking you specifically. 7 MR. POWELL: Well, I--I think that 8 there's--I--I'd say that there's two reasons. I'd 9 say, number one, I'd--I'd say the state's drug 10 their feet, and, number two, I--me being alone 11 and--and having to do all of these requirements 12 myself, I think it's taken more time. 13 THE CONFERENCE OFFICER: And--and do 14 you understand that--that under the law you 15 shouldn't have created any of this disturbance 16 without a permit and an adequate bond? Do--do 17 you understand that part of the law? 18 MR. POWELL: Well, I--I feel we've 19 lived up to the law. 20 THE CONFERENCE OFFICER: So do you 21 agree on the amounts of disturbance that are shown 22 in the--in the chronology that we presented you 23 with? 24 MR. POWELL: I don't. I don't agree 25 with the amount that--the land and I don't agree</p>	<p style="text-align: right;">Page 23</p> <p>1 THE CONFERENCE OFFICER: Okay. But-- 2 but do you understand that it's--you're the one 3 that's supposed to provide the maps when--when you 4 do a permit application? 5 MR. POWELL: I--I don't understand 6 that. I have supplied the maps. 7 THE HEARING OFFICER: So there's a 8 substantial difference between you and the 9 Division in terms of the--the reclamation 10 disturbance-- 11 MR. POWELL: You'd better answer that 12 yourself. 13 THE CONFERENCE OFFICER: Well, I'm 14 asking you. 15 MR. POWELL: Yeah. 16 THE CONFERENCE OFFICER: That's what 17 you're here for. 18 MR. POWELL: I--I--I go by my maps, 19 okay? I go by the maps I furnished. 20 THE CONFERENCE OFFICER: And are those 21 maps certified or--or done by a certified surveyor 22 or anything like that? 23 MR. POWELL: They started out that way. 24 THE CONFERENCE OFFICER: Has the--has 25 the amount of disturbance increased from the time</p>
<p style="text-align: right;">Page 22</p> <p>1 with the--the amounts that the state has set for 2 the reclamation. And I've--I've expressed that 3 to--to Lynn on several occasions, and I know that 4 he doesn't have that in his notes. 5 THE CONFERENCE OFFICER: Do you-- 6 MR. POWELL: Make that part of the 7 record. 8 THE CONFERENCE OFFICER: Well, it is. 9 It's-- 10 MR. POWELL: Yeah. 11 THE CONFERENCE OFFICER: It's being-- 12 it's what we're creating. 13 MR. POWELL: Yeah. Make that part of 14 the record. 15 THE CONFERENCE OFFICER: Do--do you 16 understand that-- 17 MR. POWELL: Your 43.5, I could get 18 someone to go down there and do the reclamation 19 that's two state spec.'s for about a third of 20 that. 21 THE CONFERENCE OFFICER: Do you agree 22 with the surface disturbance that we're talking 23 about in--in terms of the number of acres? 24 MR. POWELL: I don't. I've already-- 25 I've already said that.</p>	<p style="text-align: right;">Page 24</p> <p>1 that you've been working with us to acquire a 2 permit? In other words, can we--can we agree 3 that this started off as a small mining operation 4 with less than five acres' disturbance? 5 MR. POWELL: I would say that--I'd say 6 yes to that, but I'd say that there was quite a 7 bit of disturbance when we started, and I think 8 that should be taken into account. 9 THE CONFERENCE OFFICER: So it was 10 disturbance that was created by a different 11 operator? 12 MR. POWELL: That's right. It was--it 13 was--it was disturbed by Loudermouth Construction 14 back in the late '70s. In fact, let me--if 15 you've got--let me--can I see your map there? 16 Okay. Okay. But let me ask a few questions, if 17 I might. Who put this together? Who put this 18 map together? 19 MR. KUNZLER: I did. 20 MR. POWELL: Okay. What did you create 21 it from, Lynn? 22 MR. KUNZLER: I created that map from 23 the GPS data that I collected and overlaid it on 24 top of the USGS topographical map. 25 MR. POWELL: Okay. On a--on a--on a</p>

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<p style="text-align: right;">Page 25</p> <p>1 United States topographical map. What is this 2 little square--or that little emblem there, that 3 little icon? What is that? 4 MR. KUNZLER: It--it indicates that 5 there was--as of that map, that there was some 6 type of mining related disturbance. They'd called 7 it a gravel pit. 8 MR. POWELL: So do you know the date 9 that was on that map? 10 MR. KUNZLER: I do not-- 11 MR. POWELL: Okay. 12 MR. KUNZLER: --at this time. I'd have 13 to go look and see what the-- 14 MR. POWELL: Well, just tell me what 15 you think. What--what would you say? When do 16 you think that map was made? Do you think it was 17 prior to the time that we started there? 18 MR. KUNZLER: I--I--as far as the map I 19 used, no. It's probably been updated within the 20 last ten years. 21 MR. POWELL: So when did we start? 22 MR. KUNZLER: You started a small mine 23 11 years ago. 24 I don't know the date of the map. It 25 was--it's a computer generated map, and they--</p>	<p style="text-align: right;">Page 27</p> <p>1 MR. POWELL: Okay. 2 THE CONFERENCE OFFICER: Let's--let's 3 look at page .2 on the chronology, Mr. Powell, if 4 you wouldn't mind. And--and--and I'm seeing two-- 5 two acres--two acreage amounts. Look at the 6 September 22nd, 1999. We're GPSing and seeing 19 7 or 20 acres, and you're submitting an annual 8 report a few months after that, January 29th, 2001 9 that identifies eight acres of disturbance. 10 MR. POWELL: Uh-huh. 11 THE CONFERENCE OFFICER: What--what do 12 the permits-- 13 MR. POWELL: I don't--I don't think 14 we've ever--I don't think we--in any of our annual 15 reports I don't think you can find one where we 16 exceeded 13 acres. And that was by our own 17 estimates. And out of the 13 we reclaimed five, 18 what we feel is five acres. So that's why it went 19 back down to eight. 20 THE CONFERENCE OFFICER: Okay. Is 21 there anything that--that we can agree on in terms 22 of your willingness to--to comply with posting a 23 bond and/or reclaiming the disturbances that 24 you've created, or are we at loggerheads right now 25 in terms of--of where we're going, because I don't</p>
<p style="text-align: right;">Page 26</p> <p>1 MR. POWELL: Well, if-- 2 MR. KUNZLER: --try to keep them 3 updated with-- 4 MR. POWELL: Is there a chance--is 5 there any chance-- 6 MR. KUNZLER: There--there is. And I'm 7 not--we're not arguing that there was something 8 there before you moved in. 9 MR. POWELL: Okay. That's the point 10 I'm trying to make. Thank you. 11 MR. KUNZLER: And we've never argued 12 that. 13 MR. POWELL: Okay. 14 MR. KUNZLER: And, in fact, the portion 15 on that map that shows--that's identified as not 16 needing--needing reclamation is old disturbance 17 that was done prior to you being there, that you 18 are not reimpacting, reusing, necessarily. 19 MR. POWELL: Yeah. Well, that's the 20 remnants. That's--that's the remnants of what you 21 can--that you--that you-- 22 MR. KUNZLER: But--but--but the law 23 says that if you reuse areas that were previously 24 disturbed you do have a responsibility for 25 reclamation of those areas.</p>	<p style="text-align: right;">Page 28</p> <p>1 want to protract this--conference if--if that's 2 the case. 3 MR. POWELL: Did you see that document 4 that I just handed to you? 5 THE CONFERENCE OFFICER: I can see it 6 in front of me right now. 7 MR. POWELL: Maybe you ought to read 8 it. And--and those words that you're using is 9 twisting and distorting the record, and I want it 10 corrected, and let's quit playing games. 11 THE CONFERENCE OFFICER: Well, then I 12 think if--do you have anything else you want to 13 say? 14 MR. POWELL: That's it. 15 THE CONFERENCE OFFICER: Do you have 16 any-- 17 MR. POWELL: I'll let that document 18 speak for itself. 19 THE CONFERENCE OFFICER: Then I think 20 we'll conclude by saying that we have unreclaimed 21 disturbance and unbonded disturbance right here. 22 I'm going to--to review this letter that you 23 suggested that we do, and I'm going to make a 24 finding on this, and I'll have those findings to 25 you within 30 days.</p>

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1 MR. POWELL: Great. I'll be waiting
2 for it. In the meantime, I'll be working on my
3 bond.
4 THE CONFERENCE OFFICER: And do we have
5 a correct address for you?
6 MR. POWELL: What address have you been
7 sending it to?
8 THE CONFERENCE OFFICER: I'm asking
9 you. You--you asserted that we didn't have an
10 adequate address. Is the address that we have on
11 the record right now your current address, your
12 current business address?
13 MR. POWELL: And what--what address is
14 that, sir?
15 THE CONFERENCE OFFICER: Please read
16 that, Wayne.
17 MR. HEDBERG: We have a--the last
18 letter that was sent, and I believe it was sent
19 to his home address, which is 62 South 800 West;
20 Payson, Utah 84651.
21 MR. POWELL: That--that--that's great.
22 THE CONFERENCE OFFICER: That's where
23 we should be sending business records?
24 MR. POWELL: Either that one or the
25 P.O. Box 489; Price, Utah 84501. Either one of

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1 those will get to me. But sending it to my
2 competition is not only against the law, that's
3 the wrong address, and nobody--nobody that deals
4 with Emery Industrial Resources ever authorized
5 that, ever.
6 Thank you.
7 THE CONFERENCE OFFICER: Thank you for
8 coming in.
9 That will conclude this informal
10 conference.
11 (The conference was concluded at 11:10 a.m.)
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